if the "rule of reason" shows that the general condition of competition in the trade is not substantially impaired. But if, in a given case, the purpose or result of the combination appears to be to establish, in any substantial sense, non-competitive conditions in the trade as a whole, the policy of the law is violated, and no room is left for the court to apply its own theories of policy, economics or morals. *Standard Sanitary Mfg. Co. v. United States* (1912) 226 U. S. 20, 49; 33 Sup. Ct. 9, 15; *Cf. International Harvester Co. v. Missouri* (1914) 234 U. S. 199, 209; 34 Sup. Ct. 859, 862. Judged by this test the combination in the principal case was clearly illegal.

H. W. D.

SALES—SERVING OF GAME AS "SALE" WITHIN GAME LAW.—Two guests at the defendant's hotel were served native partridge. The New York Conservation Law provides that the dead bodies of birds native to the state, and protected by law shall not be "sold, offered for sale, or possessed for sale for food purposes within this state, . . ." *Held,* that the serving of partridges as part of the guests' table d'hôte meal constituted a sale in violation of the statute. *People v. Clair* (1917, N. Y.) 116 N. E. 868.

Both at common law and under the Sales Act, general property as distinguished from special property must pass in order to effect a sale. *Jenkyns v. Brown* (1849) 14 Q. B. 496. Uniform Sales Act, Sec. 1, §76. But a guest at a hotel or restaurant does not get general property, *i. e.,* all the incidents of ownership, in the food that he orders. He is privileged to eat as much as he desires, but, having eaten, his control over the remaining food is at an end. What he buys is not a specified quantity of food, but service and the *privilege* of eating. The transaction of serving and receiving pay for a meal has, therefore, been held not to constitute a sale under the Sales Act. *Merrill v. Hodson* (1914) 88 Conn. 314, 91 Atl. 533; Beale, *Innkeepers* §169. On the other hand it has been held in cases relating to statutes regulating the sale of liquor, impure milk, and oleomargarine that serving and receiving pay therefor does constitute a sale. *State v. Lotti* (1900) 72 Vt. 115, 47 Atl. 392; *Commonwealth v. Warren* (1894) 160 Mass. 533, 36 N. E. 308; *Commonwealth v. Miller* (1890) 131 Pa. St. 118, 18 Atl. 938. Since a technical interpretation of the term "sale" in the case of game laws and similar prohibitory statutes would open the way to evasion of the law, it is submitted that the more liberal construction adopted in the principal case, and in the great majority of similar cases, is both reasonable and desirable.

C. S. B.

TAXATION—INHERITANCE AND TRANSFER TAXES—EXEMPTION OF INSTITUTIONS RECEIVING "STATE AID."—The Connecticut Inheritance Tax statute exempted "all property passing to or in trust for the benefit of any corporation or institution located in this state which receives state aid." (Pub. Acts of 1915, ch. 332, sec. 3.) The will of Justus S. Hotchkiss, a Connecticut testator, left bequests to five institutions, including Yale University, all of which enjoyed under general or special laws more or less complete exemption from ordinary taxation. *Held,* that such tax exemptions constituted "state aid" within the meaning of the inheritance tax

law, and the institutions receiving them were also exempt from the inheritance tax. *Corbin v. Baldwin* (1917, Conn.) 101 Atl. 834.

Several instances of the use of the term "state aid" in various senses in Connecticut statutes and decisions are referred to in the opinion. The decision seems justified from the standpoint of statutory construction and is in line with the previous policy of the state, both legislative and judicial, in treating educational, religious and charitable institutions as in a sense agencies of the state, established and encouraged for the public benefit.

TAXATION—INHERITANCE AND TRANSFER TAXES—SURVIVORSHIP OF JOINT TENANT.—A husband and wife owned jointly certain bonds, which they delivered to a trust company as trustee to pay them the income in equal shares and, if the agreement was in force at the death of either, to deliver the bonds to the survivor. An amendment to the Transfer Tax Act, subsequently passed, provided that where property was held jointly and payable to the survivor, the survivor's right should be deemed a taxable transfer. The husband died and a transfer tax was assessed on his interest in the bonds. *Held,* that the husband and wife were joint tenants and not tenants by the entirety, and that his interest passing to his wife by survivorship was taxable. *In re McKelway's Estate* (1917, N. Y.) 116 N. E. 348.

Apart from any question of constitutionality, inheritance and transfer tax statutes are commonly construed as applying to such transfers and devolutions only, as take place after the passage of the act imposing the tax. Ross, *Inheritance Taxation,* sec. 36. *Matter of Seaman* (1895) 147 N. Y. 69, 41 N. E. 401. And it was held in New York, in a case involving a vested remainder not yet come into possession, that a statute attempting to tax past transfers was unconstitutional. *Matter of Pell* (1902) 171 N. Y. 48, 63 N. E. 789. It has also been held, both in New York and elsewhere, that contingent remainders created before the passage of the tax law are not subject to tax though the contingency occurs subsequently. *Matter of Seaman, supra; Lacey v. State Treasurer* (1911) 152 Iowa 477, 132 N. W. 843. The principal case recognizes the rule against retroactive operation, but argues that since the husband had power to defeat the wife's right of survivorship by conveying his interest in his life-time, her right was not vested until his death, and therefore at his death there was a taxable transfer. This seems to be attaching undue weight to mere inaction on the husband's part. The wife's right in the principal case would seem to be closely analogous to a remainder subject to be defeated by the exercise of a power of appointment. The New York court has expressly held that in such a case, while the exercise of the power would be a taxable transfer, its non-exercise is not, and when the instrument creating the power was prior to the statute, property passing in default of appointment cannot constitutionally be taxed. *Matter of Langdon* (1897) 153 N. Y. 6, 46 N. E. 1034; *Matter of Lansing* (1905) 182 N. Y. 238, 247, 74 N. E. 882. In Massachusetts, however, a statute expressly imposing such taxation has been upheld. *Minot v. Treasurer* (1911) 207 Mass. 588, 93 N. E. 973. The decision in the principal case thus finds support in a case from another jurisdiction but is difficult to reconcile with the previous New York decisions.

S. J. T.